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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/688,955	10/21/2003	Diane P. Moore	402-194	3315

7590 12/27/2006
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EXAMINER

PLUMMER, ELIZABETH A

ART UNIT	PAPER NUMBER
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3635

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	12/27/2006	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/688,955

Applicant(s)

MOORE ET AL.

Examiner

Elizabeth A. Plummer

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 October 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 21 October 2003 is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>10/21/2003</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

This is a first Office action on the merits for application serial number 10/688,955 filed 10/21/2003. Claims 1-20 are pending.

Drawings

1. The drawings are objected to because not all reference characters are legible. For example, in Fig. 3 the vertical support elements appear to be labeled "M." For purposes of examination, the examiner assumes that "M" is intended to be reference character "14." Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-13, 16-17 and 19-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Levy (US Patent 2,991,040).

a. Regarding claim 1, Levy discloses a supporting structure adapted to be removably mounted between a floor and ceiling for providing surface area for mounting one or more articles directly thereon, said supporting structure mountable between the floor and the ceiling (Fig. 1) so as to be removably retrained substantially flush against a wall surface by frictional engagement (column 1, lines 45-50) between the supporting structure and the floor and the ceiling.

b. Regarding claim 2, the supporting structure comprises a beam (11a).

c. Regarding claims 3 and 4, the beam (11a) is generally square in cross-sectional configuration (Fig. 2; column 2, lines 20-24). Squares are inherently rectangular.

d. Regarding claim 5, the beam is oriented substantially transversely to the ceiling and the floor (Fig. 1).

e. Regarding claim 6, the supporting structure further includes a means for adjusting the length of the beam to substantially correspond to the distance

between the floor and the ceiling such that the beam is mounted in a substantially vertical orientation between the ceiling and the floor by frictional engagement (column 1, lines 40-50; Fig. 1).

f. Regarding claim 7, the means for adjusting includes a resilient element (15) extending from one end of the beam for engaging the ceiling (column 2, lines 25-32).

g. Regarding claim 8, the resilient element (15) extends from the top end of the beam for engaging the ceiling.

h. Regarding claims 9 and 13, the supporting structure further includes a supporting element (13) extending from the bottom end of the beam for engaging the floor (Fig. 2).

i. Regarding claim 10, the supporting element (13) is a supporting foot (Fig. 2).

j. Regarding claims 11 and 12, the means for adjusting includes a telescoping element (12) extendable from the top of the beam (11a) for engaging the ceiling.

k. Regarding claim 16, Levy discloses a supporting structure adapted to be removably mounted between a floor and a ceiling for providing surface area for mounting one or more article directly thereon (Fig. 1), the supporting structure comprising at least two beams (11a; column 2, lines 5-15) oriented substantially transversely to the ceiling and the floor (Fig. 1), the beams being maintained

substantially flush against a wall surface by frictional engagement between each of the beams and the ceiling and the floor (column 1, lines 40-50).

l. Regarding claim 17, the supporting structure further includes a bridging element (10, 10a) disposed between two beams.

m. Regarding claim 19, Levy discloses a supporting structure adapted to be removably mounted between a floor and a ceiling for providing surface area for mounting one or more article directly thereon (Fig. 1), the supporting structure comprising at least two beams (11a; column 2, lines 5-15) oriented substantially transversely to the ceiling and the floor (Fig. 1), at least one bridging element (10, 10a) extending between the two adjacent beams and oriented substantially transversely to the two adjacent beams (Fig. 1), and the beams and bridging element being maintained substantially flush against a wall surface by frictional engagement between each of the beams and the ceiling and the floor (column 1, lines 40-50).

n. Regarding claim 20, the supporting structure further includes a means for adjusting the length of the two beams to substantially correspond to the distance between the floor and the ceiling (column 1, lines 40-45).

4. Claims 1, 2, 14 and 15 are rejected under 35 U.S.C. 102(b) as being anticipated by Stiffel (US Patent 2,855,037).

a. Regarding claim 1, Stiffel discloses a supporting structure adapted to be removably mounted between a floor and a ceiling for providing surface area for mounting one or more articles directly thereon (Fig. 3), said supporting structure

mountable between the floor and the ceiling so as to be removably retained substantially flush against a wall surface by frictional engagement between the supporting structure and the floor and the ceiling (Fig. 3; column 1, lines 20-25).

b. Regarding claim 2, the supporting structure comprises a beam or post (column 2, lines 1-9).

c. Regarding claim 14, the supporting structure further includes at least one panel (64) mounted to the beam, the panel (64) extending from at least a portion of the outer surface of the beam (Fig. 1,2,3).

d. Regarding claim 15, the supporting structure includes a plurality of panels extending from the beam (Fig. 1,2,3), the panels being foldable between a first compact position and a second extended position (column 4, lines 24-25).

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Levy (US Patent 2,991,040) in view of Ferdinand et al. (US Patent 3,771,466). Regarding claim 18, Levy discloses a supporting structure with a bridging element (10, 10a) that provides additional surface area for mounting one or more articles to the supporting structure. Levy does not disclose the bridging element being formed from the same

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material as the two beams. It would have been a matter of obvious design choice to form the bridging element out of the same material as the beams, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. In re Leshin, 125 USPQ 416. Furthermore, it is well known in the art of shelving support structures that bridging elements can be made from the same material as the support beams in order to create a more pleasing support structure. For example, Ferdinand et al. teaches a shelving support structure wherein the beams and the shelving are both made of steel (column 1, lines 17-20; column 4, line 57; column 5, lines 6-7) in order to form a uniform support structure. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Levy to include bridging elements made of the same material as the beams, such as taught by Ferdinand et al., in order to create a more aesthetically pleasing supporting structure.

Conclusion

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Contact Information

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Elizabeth A. Plummer whose telephone number is (571) 272-2246. The examiner can normally be reached on Monday through Friday, 8:30-5:00.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Naoko Slack can be reached on (571) 272-6848. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



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